the use of the solution, and the device of the United States patent was aimed to secure it. It is distinct from the method. Whether it has patentable novelty is another question. And a serious question it is. The solubility of acetylene in liquids, especially in acetone, is availed of in all of the patents, United States and foreign. This cannot be denied—indeed, is admitted—and, as we have seen, there are devices described in the foreign patents for storing the solution and devices indicated for its use. The similarities and differences between the patents have given rise to a diversity of opinion and decision.

The Circuit Court of Appeals for the sixth circuit discerned a difference between the British patent and that in suit and considered that the former was for a process and the latter for an instrument to perform the process and, therefore, the two were not for the same invention and that necessarily the United States patent did not expire with the British patent. 192 Fed. Rep. 321.

The Circuit Court of Appeals for the seventh circuit expressed a contrary view and decided that the British patent and the patent in suit were for substantially the same invention, and the British patent having expired the patent in suit expired with it. The decisions had, respectively, the support of Judge Denison (188 Fed. Rep. 89) and Judge Kohlsaat (188 Fed. Rep. 85; 192 Fed. Rep. 321).

It was decided in the Circuit Court for the eastern district of Wisconsin, Judge Quarles sitting, that the device of the patent in suit was patentable and was not anticipated by anything in the prior art. 166 Fed. Rep. 907; see also 191 Fed. Rep. 387.

It was this conflict of views that induced this writ, but the conflict is not as to all questions in the case. If the decisions of the trial courts may be in opposition on invention and infringement as well as on the effect of the

foreign patents, such conflict cannot be asserted of the opinions of the Circuit Courts of Appeal. That of the eighth circuit—and to which this writ is directed—refrained from a decision on the merits and considered only the propriety of the discretion exercised by the trial court in granting a preliminary injunction; and, reviewing the expression of judicial opinion, decided that the court was justified in making the order. The Court of Appeals went no farther, as we have seen, and we are disposed to a like limitation. The questions are seriously disputable, as the difference in decision indicates, and we think we should follow the Circuit Court of Appeals and imitate the example of *Leeds & Catlin* v. *Victor Talking Machine Co.*, 213 U. S. 301, 311, 312. We have not the aid—and its value is inestimable—of the judgment of the trial court or of the Circuit Court of Appeals but must consider the question upon conflicting allegations and affidavits. The better course, therefore, is to reserve all questions except that of the identity of the patent in suit with the foreign patents and its termination by their expiration, and, with that reservation, we decide only that there was no abuse of discretion in granting and sustaining the order of injunction.

Affirmed.